# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## FIRST APPEAL No. 1569 of 2002
## To
## FIRST APPEAL No. 1570 of 2002

**HONOURABLE MR.JUSTICE ANIL R. DAVE**

**HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**NEW INDIA ASSURANCE CO LTD. - Appellant(s)**
**Versus**
**SAVITABEN BHIKHABHAI & 2 - Defendant(s)**

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**Appearance :**
MR PV NANAVATI for Appellant(s) : 1,MR VIBHUTI NANAVATI for Appellant(s) : 1,
None for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5 - 3.
MR DC SEJPAL for Defendant(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
- for Defendant(s) : 0.0.0

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**CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE**

**and**

**HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 20/06/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE K.S. JHAVERI)**

1.0 The appeal No.1569 of 2002 is directed against the judgement and award dated 2nd May 2002 passed in Motor Accident Claim Petition No.53 of 1997 passed by the Motor Accident Claims Tribunal (Auxi-I), Bhavnagar, whereby the Tribunal has awarded a sum of Rs.2,34,000/- together with interest thereon at the rate of 12% per annum from the date of the petition till realization with costs. Appeal No.1570 of 2002 is directed against the judgement and award dated 2nd May 2002 passed by the same Tribunal in Motor Accident Claim Petition No.54 of 1997 whereby the Tribunal has awarded a sum of Rs.4,78,800/- together with interest thereon at the rate of 12% per annum from the date of petition till realization with costs. Both the aforesaid awards were passed by a common judgement.

2.0 On 7th November 1996 one Lavjibhai and Bhikhabhai were travelling on a Rajdoot Motorcycle towards village Nana Umarda. Lavjibhai was driving the motorcycle and Bhikhabhai was pillion rider. When they reached near the place of accident, a tempo bearing No.GJ 4 T 6492 came from opposite direction in an excessive speed and

dashed with the Rajdoot motorcycle. Both Lavjibhai and Bhikhabhai fell down, sustained injuries and died. The legal representatives of Bhikhabhai filed Motor Accident Claim Petition No.53 of 1997 claiming a sum of Rs.5 lacs and legal representatives of Lavjibhai filed Motor Accident Claim Petition No.54/97 claiming a sum of Rs.11 lacs before the Motor Accident Claims Tribunal, Bhavnagar. The Tribunal heard both the claim petitions and by common judgement dated 2nd May 2002 passed the aforesaid award which is challenged in the aforesaid appeals.

3.0 Mr. Nanavati, learned Advocate for the appellant submitted that from the evidence on record the handle, mudguard and headlight of the motor cycle were damaged and its rim was found bent and there was no damage on the rear side of the motorcycle. It was also found that tempo was damaged on the bumber side of the driver and therefore it is evident that the driver of the motorcycle did not wait for the tempo to pass and on account of his rash and negligent driving the accident had occurred. He submitted that the finding of the Tribunal that the driver of the tempo was negligent to the extent of 90% and the driver of the motorcycle was negligent to the extent of 10% is entirely based on no rational basis. He further submitted that the award of the Tribunal is excess which requires to be refixed. Mr. Nanavati has also contended

that the income taken by the Tribunal is without any evidence on record, the multiplier is on higher side and in short the award on each head is on higher side.

4.0 Learned Advocate for the respondents-original claimants submitted that the Tribunal has considered all the aspects of the matter and no case is made out to cause any interference in the present appeals.

5.0 We have heard the learned Advocates for the respective parties and perused the relevant record. The appellant had filed application under section 170 of the Act wherein permission was granted to file and contest the appeals on merits.

6.0 The main contention raised in the appeal is that the deceased was negligent as a result of which the accident has occurred. In this connection it is required to be noted the findings of the Tribunal. The Tribunal found that according to panchnama, the incident had happened on a narrow rough road during day light. It was a head-on collision and front side of both the vehicles were damaged. Both the vehicles were coming from opposite direction and drivers of both the vehicles ought to have seen the other vehicle coming from opposite direction and they ought to have driven their respective vehicles in a

prudent manner. Driver of the tempo has neither filed his written statement nor entered into the witness box denying the allegations leveled against him. From the panchnama it was found that the tempo was not lying at the place of the incident. Since the accident has happened on somewhat narrow road and therefore more degree of caution ought to have been taken by the drivers of both the vehicles. Therefore, looking to the overall facts of the case and especially the tempo was not lying at the place of incident and the driver of the tempo was more responsible for causing the accident the Tribunal decided that the ratio of negligence should be apportioned at 90% to the driver of the tempo and 10% to the driver of the Rajdoot motorcycle respectively. Learned advocate for the appellant is not able to point out anything from the record to take a different view of the matter.

7.0 As regards the quantum part in Motor Accident Claim Petition No.53 of 1997 is concerned, the original claimants had deposed that the deceased was earning Rs.4000/- per month from grocery shop. In absence of any documentary evidence the Tribunal has taken Rs.3000/- per month as income of the deceased. We are of the opinion that this is just and reasonable and learned Advocate for the appellant has failed to point out that the said finding is perverse. Taking the annual income at Rs.36000/- the Tribunal has deducted 1/3 towards personal expenses

of the deceased and the dependency benefit was taken at Rs.24000/- per year. Further, the age of the deceased was 52 years and therefore a multiplier of 10 was applied. We are of the opinion that multiplier of 10 is also reasonable on the facts of the case. The Tribunal has further awarded Rs.10000/- towards consortium to widow, Rs.5000/- for loss of estate and Rs.5000/- for loss of love and affection. We are of the view that it cannot be said that those amounts are so excessive that interference of this Court is warranted. Thus, we do not find any merits in the appeal No.1569 of 2002.

8.0 As far as Motor Accident Claim Petition No.54 of 1997 is concerned, the deceased was 29 years of old. He was doing diamond polishing work. According to the claimants the deceased was earning Rs.4500/- per month. It was also argued that the deceased was earning Rs.25000/- per month from agricultural land. As regards diamond polishing work, the claimants had produced diamond factory cards, abstracts of account of the deceased, etc. As far as agricultural income is concerned, no proof is produced except village record etc. Therefore considering the overall facts and circumstances of the case, the Tribunal has taken income of the deceased at Rs.4000/-. There is no dispute that the deceased was doing diamond cutting work. There is also evidence on record with regard to the agricultural land. Therefore,

we are of the view that the Tribunal is fully justified in taking the income of the deceased at Rs.4000/- per month and the learned Advocate for the appellant has failed to point out that the said figure of income is in any manner excessive. The Tribunal has rightly deducted 1/3rd amount towards personal expenses of the deceased and found that the dependency of the claimants would be at Rs.32000/- per year. Looking to the age of the deceased i.e.29 years the Tribunal has applied multiplier of 16, which also cannot be said to be on higher side. Likewise, award of Rs.10000/- towards consortium to widow, Rs.5000/- towards of loss of estate and Rs.5000/- towards loss of love and affection is just and proper and no interference is required.

9.0 In the premises aforesaid, we do not find any merits in both the appeals. The appeals are, therefore, dismissed. No order as to costs.

[ANIL R. DAVE, J.]

[K.S. JHAVERI, J.]

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